



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0529; FRL-9957-16-Region 5]

**Air Plan Approval; Wisconsin; Infrastructure SIP Requirements
for the 2012 PM_{2.5} NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of some elements of a July 13, 2015 state implementation plan (SIP) submittal from the Wisconsin Department of Natural Resources (WDNR) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The proposed rulemaking associated with this final action was published on February 19, 2016, and EPA received adverse comments during the comment period, which ended on March 21, 2016. Responses to comments are included below. In this rulemaking, EPA is not taking action on Wisconsin's satisfaction

of the infrastructure requirements of CAA section 110(a)(2)(F), also referred to as "element F," which pertains to stationary source monitoring and reporting. EPA proposed approval of and received an adverse comment on our proposed approval of element F, which will be addressed in a separate rulemaking. In this rulemaking we respond to the remainder of the comments we received on our initial proposed rulemaking, which includes those comments not pertaining to element F, and finalize as initially proposed our approval of the other elements of Wisconsin's 2012 PM_{2.5} infrastructure SIP.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0529. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection

Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Jenny Liljegren, Physical Scientist, at (312) 886-6832 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jenny Liljegren, Physical Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6832, Liljegren.Jennifer@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows: is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the background of this SIP submittal?
- II. Responses to comments received on EPA's proposed rulemaking.
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews.

I. What is the background of this SIP submittal?**A. What state SIP submittal does this rulemaking address?**

This rulemaking addresses a July 13, 2015 infrastructure SIP submittal from WDNR for the 2012 PM_{2.5}¹ NAAQS.

B. Why did the State make this SIP submittal?

Under section 110(a)(1) and (2) of the CAA, states are required to submit infrastructure SIPs to ensure that their SIPs provide for implementation, maintenance, and enforcement of the NAAQS, including the 2012 PM_{2.5} NAAQS. This submittal must contain any revisions needed for meeting the applicable SIP requirements of section 110(a)(2) or certifications that the state's existing SIP for the NAAQS already meets those requirements.

EPA highlighted this statutory requirement in an October 2, 2007 guidance document entitled "Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and PM_{2.5} National Ambient Air Quality Standards" and has issued additional guidance documents, the most recent on September 13, 2013, entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under CAA Sections 110(a)(1) and 110(a)(2)." The SIP submittal referenced in this rulemaking

¹ PM_{2.5} refers to particles with an aerodynamic diameter of less than or equal to 2.5 micrometers, oftentimes referred to as "fine" particles.

pertains to the applicable requirements of section 110(a)(1) and (2) and addresses the 2012 PM_{2.5} NAAQS.

C. What is the scope of this rulemaking?

EPA is acting upon the SIP submittal from WDNR that addresses the infrastructure requirements of CAA section 110(a)(1) and (2) for the 2012 PM_{2.5} NAAQS. The requirement for states to make SIP submittals of this type arises out of CAA section 110(a)(1). States must make SIP submittals "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submittals are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submittals, and the requirement to make the submittal is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submittal must address.

EPA has historically referred to these SIP submittals made for the purpose of satisfying the requirements of CAA section 110(a)(1) and (2) as "infrastructure SIP" submittals. Although the term "infrastructure SIP" does not appear in the CAA, EPA

uses the term to distinguish this particular type of SIP submittal from submittals that are intended to satisfy other SIP requirements under the CAA, such as SIP submittals that address the nonattainment planning requirements of part D of Title I of the CAA, the Prevention of Significant Deterioration (PSD) requirements of part C of title I of the CAA, and "regional haze SIP" submittals required to address the visibility protection requirements of section 169A of the CAA.

This rulemaking will not cover three substantive areas that are not integral to acting on a state's infrastructure SIP submittals: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction ("SSM") at sources that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to "director's variance" or "director's discretion," which purport to permit revisions to SIP-approved emissions limits with limited public notice or without requiring further approval by EPA and may be contrary to the CAA; and, (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Instead, EPA has the authority to address each one

of these substantive areas in separate rulemakings. A detailed history, interpretation, and rationale, as they relate to infrastructure SIP requirements, can be found in EPA's May 13, 2014, proposed rule entitled, "Approval and Promulgation of Air Quality Implementation Plans; Illinois, Michigan, Minnesota, WDNr; Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" (see 79 FR 27241 at 27242 - 27245).

II. Responses to comments received on EPA's proposed rulemaking.

The public comment period for our proposed rulemaking with respect to WDNr's satisfaction of the infrastructure SIP requirements for the 2012 PM_{2.5} NAAQS closed on March 21, 2016. EPA received two comment letters, one from Clean Wisconsin and one from Midwest Environmental Advocates (MEA). A synopsis of the comments contained in these letters and EPA's responses are provided below. As mentioned previously, EPA is not taking action on CAA section 110(a)(2)(F) in this rulemaking. EPA's action on element F and our response to the comment from MEA pertaining to our proposed approval of element F will be addressed in a separate rulemaking.

Comment 1: With regard to EPA proposing that WDNr has met the infrastructure SIP requirements of section 110(a)(2)(A) for

the 2012 PM_{2.5} NAAQS, MEA comments that particulate and visible emissions limitations in Wisconsin Administrative Code Chapters NR 415 and NR 431 are outdated, do not reflect the current state of the art in air pollution control methods, are insufficient to ensure compliance with the PM_{2.5} NAAQS, and must be supplemented to meet Federal standards. Part of this issue stems from the lack of information about PM_{2.5} emission factors, control measures, and public exposure. MEA urges EPA to require WDNR to use its enforcement program to expand upon the lack of knowledge of PM_{2.5} emission factors by requiring testing and monitoring in lieu of or in addition to fines when settling enforcement cases.

Response 1: Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques, as well as schedules and timetables for compliance, and other related matters. EPA has long interpreted these requirements as being due when nonattainment planning requirements are due.^{2,3} Thus, in the context of an infrastructure SIP, EPA is not evaluating the existing SIP provisions for the purpose of emissions limits and control

² See, e.g., EPA's final rule on "National Ambient Air Quality Standards for Lead." 73 FR 66964 at 67034.

³ Currently, Wisconsin has no nonattainment areas for the 2012 PM_{2.5} NAAQS, and the only nonattainment area in Wisconsin for the 2006 PM_{2.5} NAAQS – the Milwaukee-Racine Nonattainment Area, including Milwaukee, Racine, and Waukesha counties – has been redesignated (79 FR 22415) to a maintenance area.

measures, which are connected with nonattainment planning requirements. Instead, EPA is only evaluating whether the state's SIP has the basic structural provisions required for the implementation of the NAAQS. As explained in the proposed rule, EPA finds that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(A) with respect to the 2012 PM_{2.5} NAAQS.

Section 110(a)(2)(C) requires each state to provide a program for enforcement of all SIP measures. Under *Wis. Stats.* 285.13, WDNR has the authority to impose fees and penalties to ensure that required measures are ultimately implemented. *Wis. Stats.* 285.83 and *Wis. Stats.* 285.87 provide WDNR with the authority to take enforcement actions and assess penalties. While, in general, any efforts to expand upon the lack of knowledge of PM_{2.5} emission factors via testing and monitoring would be extremely useful for air quality planning, MEA's suggestion goes beyond the scope of this rulemaking and the minimum requirements under the CAA. EPA finds that WDNR's enforcement program, as it currently exists, has met the enforcement of SIP measures requirements of section 110(a)(2)(C) with respect to the 2012 PM_{2.5} NAAQS. Accordingly, in this rulemaking, EPA is not requiring WDNR to use its enforcement program to expand upon the lack of knowledge of PM_{2.5} emission

factors – which is suggested by MEA – in lieu of or addition to fines when settling enforcement cases.

Comment 2: With regard to EPA proposing that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM_{2.5} NAAQS, MEA comments that WDNR's PM_{2.5} monitoring network only includes 20 monitoring sites for PM_{2.5} and is insufficient to characterize public exposure to PM_{2.5}. EPA should expand the ambient air monitoring network for PM_{2.5} by using its authority to require industrial facilities to install and operate ambient monitors where members of the public are likely to be exposed to PM_{2.5}, especially at possible NAAQS hotspots.

Response 2: WDNR submits annual monitoring network plans to EPA. EPA approved WDNR's 2016 Annual Air Monitoring Network Plan on October 26, 2015, and EPA approved (with exceptions)⁴

⁴ The exceptions do not pertain to Wisconsin's PM_{2.5} monitoring network. There are two exceptions to EPA's approval of Wisconsin's 2017 Annual Air Monitoring Network Plan. The first exception pertains to Wisconsin's request to shorten the ozone season which was extended with the revision of the ozone NAAQS in October 2015 (40 CFR part 58, section 4.1(i)). WDNR must plan to monitor for ozone, statewide, during the required ozone season in effect January 1, 2017. EPA's approval of Wisconsin's 2017 Annual Air Monitoring Network Plan does not constitute approval of the shortened ozone season requested by Wisconsin. The second exception pertains to a nitrogen dioxide (NO₂) monitor. Wisconsin may discontinue/shut-down the Photochemical Air Monitoring Station (PAMS) at the Southeast Regional office (SER/DNR) as per EPA's October 16, 2015 revisions to the PAMS monitoring requirements with the exception of the NO₂ monitor at this site. 40 CFR part 58, appendix D, section 4.3 requires the Milwaukee-Waukesha-West Allis metropolitan statistical area to operate two NO₂ monitoring sites. One site should be collocated with a near-road site and a second representative of area-wide NO₂

WDNR's 2017 Annual Air Monitoring Network Plan on October 31, 2016. EPA's review of the annual monitoring plan includes EPA's determination that the state monitors air quality at appropriate locations throughout the state in accordance with 40 CFR part 58. EPA's October 26, 2015 approval of WDNR's 2016 Annual Air Monitoring Network Plan and EPA's October 31, 2016 approval of WDNR's 2017 Annual Air Monitoring Network Plan indicates that WDNR has met the requirements of 40 CFR part 58 with respect to its 2016 and 2017 PM_{2.5} monitoring networks. Therefore, EPA finds that Wisconsin has met the infrastructure SIP requirements of section 110(a)(2)(B) with respect to the 2012 PM_{2.5} NAAQS. WDNR's Annual Network Plan can be found at <http://WDNR.wi.gov/topic/AirQuality/Monitor.html>.

Comment 3: MEA comments that "Compounding the issue of insufficient monitoring is the fact that the WDNR does not require industrial facilities to provide and report their annual PM_{2.5} emissions like they do for PM and PM₁₀. Each facility is in the best position to know their actual emissions from the previous year, so not requiring a report at the end of the year makes it even more difficult to identify any violations. The

emissions. Wisconsin meets the near-road station NO₂ monitoring requirement with the College Avenue near-road station and the area-wide monitoring requirement with the NO₂ monitoring conducted at the PAMS at SER/DNR. Therefore, Wisconsin may discontinue/shut-down the PAMS at SER/DNR with the exception of the NO₂ monitor.

information needed to make that assessment would need to be sought out independently for each facility in the entire state, which requires a great deal more work than reading a report and comparing it to the limit. States such as Indiana and Iowa already have this requirement in place, so it has been successfully implemented elsewhere, and there is no reason it cannot be done in Wisconsin as well."

Response 3: EPA will respond to this comment and address in a separate rulemaking Wisconsin's satisfaction of CAA section 110(a)(2)(F), also referred to as "element F," which pertains to stationary source monitoring and reporting.

Comment 4: (Note that we have grouped the following comments from MEA and Clean Wisconsin that are similar in content into a single comment and response section entitled "Comment 4.") MEA is concerned that WDNR underutilizes air quality modeling as a tool for determining facility-specific PM_{2.5} emissions limitations and that this may result in violations of the PM_{2.5} NAAQS. MEA, in its comment letter, provides examples of WDNR permits that set PM_{2.5} limits equal to PM₁₀ limits without conducting PM_{2.5} modeling. MEA notes that the current WDNR guideline for permit renewals suggests that if there has been no change in historical particulate emissions

since the last operation permit was issued, no modeling is necessary to verify compliance with the NAAQS. MEA also notes that WDNR registration permits only require that emission stacks be built to a certain height that is taller than any surrounding building, rather than require a modeling analysis of PM_{2.5} emissions.

Both MEA and Clean Wisconsin submitted comments regarding WDNR's "Guidance for Including PM_{2.5} in Air Pollution Control Permit Applications" (Guidance). Clean Wisconsin notes the recently issued Guidance changes WDNR's methodology for calculating PM_{2.5} emissions from certain sources and uses a weight-of-evidence approach rather than modeling for permits for certain sources. Thus, the Guidance will affect WDNR's ability to adequately model and track PM_{2.5} emissions and compromise the quality of data and analysis in determining compliance with the PM_{2.5} NAAQS. Clean Wisconsin believes the Guidance undermines WDNR's ability to provide air quality modeling data to accurately predict effects on air quality of PM_{2.5} emissions as required by section 110(a)(2)(K). MEA believes the WDNR's weight-of-evidence approach will not protect WDNR residents from exposure to unhealthy concentrations of PM_{2.5} and will fail to ensure that facilities are in compliance with the PM_{2.5} NAAQS.

Clean Wisconsin recommends, at a minimum, that WDNR conduct additional monitoring of direct PM_{2.5} before it can justify changes to its methodology for estimating PM_{2.5} emissions. Clean Wisconsin believes the Guidance serves to describe a general policy of the WDNR, carries the weight and effect of a rule, and impacts WDNR's implementation of the PM_{2.5} NAAQS. MEA believes the Guidance is essentially a rule, as defined by administrative law, and because WDNR did not follow its rulemaking process, the Guidance is an unlawful rule. Clean Wisconsin requests that EPA require WDNR to withdraw the Guidance as a condition for approval of WDNR's 2012 PM_{2.5} infrastructure SIP.

Response 4: Section 110(a)(2)(K) requires SIPs to provide for the performance of air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and the submission of such data to EPA upon request. EPA's 2013 infrastructure SIP guidance indicates that the best practice would be for an air agency to submit the statutory or regulatory provisions that provide the air agency or official with the authority to perform the following actions along with a narrative explanation of how the provisions meet the requirements of section 110(a)(2)(K): (1) conduct air quality modeling to predict the effect on ambient air quality of any

emissions of any air pollutant for which a NAAQS has been promulgated, and (2) provide such modeling data to the EPA Administrator upon request. EPA's 2013 infrastructure SIP guidance indicates EPA recognizes that some air agencies may have general authorizing provisions that do not enumerate specific activities but do implicitly authorize the air agency to perform such activities, in which case inclusion of those provisions would meet the intent of this best practice. WDNR maintains the capability and the authority to perform computer modeling of the air quality impacts of emissions of all criteria pollutants, including both source-oriented dispersion models and more regionally directed complex photochemical grid models. *Wis. Stats.* 285.11, *Wis. Stats.* 285.13, and *Wis. Stats.* 285.60 - 285.69 authorize WDNR to perform air quality modeling. Therefore EPA finds that WDNR has met the infrastructure SIP requirements of section 110(a)(2)(K) with respect to the 2012 PM_{2.5} NAAQS.

III. What action is EPA taking?

EPA is finalizing approval of most elements and deferring action on one element of a submittal from WDNR certifying that its current SIP is sufficient to meet the required infrastructure elements under section 110(a)(1) and (2) for the

2012 PM_{2.5} NAAQS. The proposed rulemaking associated with this final action was published on February 19, 2016 (81 FR 8460), and EPA received comments during the comment period, which ended on March 21, 2016. EPA has responded to each of the comments received in the section above with the exception of "Comment 3," which we intend to respond to in a separate rulemaking. EPA is taking final action to approve, as proposed, most elements of WDNR's submittal. EPA is not taking action on several elements of WDNR's submittal that will be addressed in separate rulemakings.

EPA's actions for the state's satisfaction of infrastructure SIP requirements, by element of section 110(a)(2) and NAAQS, are contained in the table below.

Element	2012 PM _{2.5}
(A) - Emission limits and other control measures.	A
(B) - Ambient air quality monitoring/data system.	A
(C)1 - Program for enforcement of control measures.	A
(C)2 - PSD.	NA
(D)1 - I Prong 1: Interstate transport - significant contribution.	NA
(D)2 - I Prong 2: Interstate transport - interfere with maintenance.	NA
(D)3 - II Prong 3: Interstate transport - prevention of significant deterioration.	NA
(D)4 - II Prong 4: Interstate	A

transport - protect visibility.	
(D)5 - Interstate and international pollution abatement.	A
(E)1 - Adequate resources.	A
(E)2 - State board requirements.	A
(F) - Stationary source monitoring and reporting	NA
(G) - Emergency power.	A
(H) - Future SIP revisions.	A
(I) - Nonattainment planning requirements of part D.	NA
(J)1 - Consultation with government officials.	A
(J)2 - Public notification.	A
(J)3 - PSD.	NA
(J)4 - Visibility protection.	A
(K) - Air quality modeling/data.	A
(L) - Permitting fees.	A
(M) - Consultation and participation by affected local entities.	A

In the above table, the key is as follows:

A	Approve
NA	No Action / Separate Rulemaking
D	Disapprove

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect,

the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2) .)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: December 13, 2016.

Robert Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2591 is amended by adding paragraph (k) to read as follows:

§ 52.2591 Section 110(a)(2) infrastructure requirements.

* * * * *

(k) Approval — In a July 13, 2015, submission, WDNR certified that the state has satisfied the infrastructure SIP requirements of section 110(a)(2)(A) through (H), and (J) through (M) for the 2012 PM_{2.5} NAAQS. We are not taking action on the prevention of significant deterioration requirements related to section 110(a)(2)(C)(ii), (D)(i)(II), and (J), the transport provisions in section 110(a)(2)(D)(i)(I), and the stationary source monitoring and reporting requirements of section 110(a)(2)(F). We will address these requirements in a separate action.